

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs, June 13, 2008

**JENNIE EVELYN GOODMAN by Next Friends JAMES B. GOODMAN and
PHYLLIS GIGER v. HOME AWAY FROM HOME, INC., HOME AWAY
FROM HOME OF MARYVILLE, LLC, TUCKALEECHEE TRAIL, LLC,
RONNY DEAN COSTNER, LYNN COSTNER, CURTIS SORRELS and
EDWINA SORRELS**

**Direct Appeal from the Circuit Court for Blount County
No. L-14055 Hon. W. Dale Young, Circuit Judge**

No. E2006-02064-COA-R3-CV - FILED JULY 22, 2008

Plaintiff mother and next friend children, sued the mother's landlord and others for damages resulting from a fire, and the Trial Court issued a restraining order which Trial Court ultimately found defendants and their attorney had violated the order and held defendants in contempt. Another daughter of plaintiff mother, acting under a power of attorney released the defendants from all claims for \$5,000.00 consideration. The Trial Court voided the release entered between the defendants and the daughter. On appeal, we reverse the contempt citation judgments and remand for further evidence on the issue of the validity of the release.

**Tenn. R. App. P.3 Appeal as of Right; Judgment of the Circuit Court Reversed in Part,
Vacated in Part, and Remanded.**

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the Court, in which CHARLES D. SUSANO, JR., J., and D. MICHAEL SWINEY, J., joined.

Eugene B. Dixon, Maryville, Tennessee, for appellants.

W. Andrew Fox, Knoxville, Tennessee, for appellants.

David Boyd, Knoxville, Tennessee, for appellees.

OPINION

Background

Plaintiffs, Jennie Evelyn Goodman, b/n/f James B. Goodman and Phyllis Giger, filed a Complaint against Home Away from Home Inc., Tuckaleechee Trail LLC, Ronny Dean and Lynn Costner, and Curtis and Edwina Sorrels on January 26, 2004. Plaintiffs alleged that Jennie Evelyn Goodman was seriously injured in a fire which occurred at Home Away from Home (an assisted living facility) on January 20, 2004, and that James Goodman and Phyllis Giger were her children, who brought the action on her behalf because she was totally incapacitated.

Plaintiffs further alleged that over the weekend prior to the filing of the Complaint, the individual defendants came to the hospital to talk to Ms. Goodman's family, and stated they had no liability insurance, that they would not be financially responsible for any losses suffered by plaintiff, and that they intended to immediately bulldoze what was left of the assisted living facility, such that if plaintiffs needed to recover any of Ms. Goodman's personal property, they should do so immediately.

Plaintiffs asked the Court to issue a restraining order to prevent the defendants from coming around plaintiffs and to prevent defendants from destroying the remains of the assisted living facility, until it could be inspected.

The Court issued a Temporary Restraining Order on January 26, 2004, and a hearing was held on February 4, 2004, regarding the TRO. Defendants' attorney announced that they did not oppose the issuance of a restraining order preventing them from going around Ms. Goodman or her family, and the Court extended the restraining order preventing demolition of the fire scene for two additional weeks, and when asked about the other part of the restraining order, the Judge stated that he understood that defendants had agreed to it, and said "we are just going to extend it anyway."

An Agreed Order was entered, extending the terms of the Restraining Order until March 5, 2004. The Agreed Order is dated January 4, 2005. Another Order was entered on the same date, stating that a hearing was held on February 9, 2004, and that the parties agreed to extend the Restraining Order for two weeks.

Defendants filed a Motion to Dismiss, asserting that James Goodman and Phyllis Giger were not proper representatives for Ms. Goodman, and alleged that Ms. Goodman had made a full recovery, but that if she had not, she had a duly appointed attorney-in-fact. The Motion was denied by the Trial Court.

Later, defendants filed a Motion to Alter or Amend, stating they had settled all claims with plaintiff through her attorney-in-fact, and attached a copy of the agreement. Plaintiffs then filed a Rule 11 Motion for Sanctions, stating the defendants' attorney, W. Andrew Fox, had violated the Restraining Order as well as the Rules of Professional Conduct, and they also filed a Motion to

Resend [sic] and/or Set Aside Release and Compromise of all Claims and Covenant Not to Sue, asserting the release was fraudulently obtained. Plaintiffs also filed a Motion to Show Cause as to Whether the Respondents and Their Attorneys Should Be Held in Contempt of Court, stating that attorney Fox, as a representative of defendants, approached Ms. Goodman's daughter and got her to sign the release in violation of the earlier Restraining Order.

In response, defendants stated that the Restraining Order was temporary and had dissolved according to its own language, which stated that it was only in effect until a further hearing, scheduled for February 9, 2004, and in response to the Rule 11 motion, they stated that plaintiffs had failed to comply with the safe harbor provision.

On January 4, 2005, the Court held a hearing on the pending motions, wherein Jane Guinn, Ms. Goodman's youngest daughter, testified that her mother signed a power of attorney naming her as her attorney-in-fact in 1996. The power of attorney was entered into evidence, and Ms. Guinn testified she knew her brother and sister had filed a lawsuit on their mother's behalf, and she did not know much about it until November 2004, when plaintiffs' attorney called and asked for a copy of her power of attorney. She testified she took the document and talked to Mr. Garrett, plaintiffs' attorney, and she was outraged by what he said. She testified that Garrett told her they were doing depositions as a "fishing expedition", because the lawsuit involved an LLC with no insurance, and if there was no money to be had, there was no point in filing the lawsuit. She testified that she felt she had been "led down the primrose path" and concluded the fire was really an accident, but that she still was out a lot of money from taking care of her mother and felt like she should be reimbursed, so she contacted Home Away From Home, and that she wanted to settle.

She further testified her mother was in the third stage of Alzheimer's, according to the doctors, and the power of attorney gave her the power to act, and she would terminate her mother's attorneys if given the opportunity. She testified that her mother was severely burned in the fire, and that her bills from Vanderbilt were over \$350,000. She testified that her mother's insurance had paid the medical bills, and whatever was left over, she paid. She concluded that the lawsuit against the defendants was a "bunch of bull", and she settled the claim for \$5,000.00 partially to pay herself back.

After taking the pending issues under advisement, the Court entered a Memorandum, finding that a hearing was held on the TRO on February 4, 2004, and that the Court extended the provisions of the TRO pending further orders of the Court. The Court held that this order had never been modified.

The Court concluded that Ms. Guinn was a family member who would come within the purview of the restraining order, and further, that attorney Fox was aware of the restraining order.

The Court found that at the hearing on January 4, 2005, Ms. Guinn had signed a release and used the funds to reimburse herself, "without any regard for her fiduciary duties to her

mother”, and that Guinn had breached her fiduciary, by settling a potential “multi-million dollar claim for a mere” \$5,000.00.

The Court found that defendants and their attorneys had contacted a family member in direct violation of the Court’s order, and that attorney Fox violated the Rules of Professional Conduct as well. The Court held that the conduct of defendants and their attorney was intentional and designed to extinguish the claim for Ms. Goodman’s injuries, and the Court concluded that defendants and attorney Fox were in civil contempt, and also held that, pursuant to Tenn. Code Ann. §34-1-121 and applicable case law, the Court had to approve any settlement on behalf of a disabled person subject to a fiduciary relationship. The Court then held that the subject release was ineffective and obtained in violation of the Court’s order, and declared it void, and fined each defendant and attorney Fox \$50.00.

Defendants filed a Notice of Appeal.

Issues Presented

1. Whether the Trial Court abused its discretion by finding that an alleged contemnor can be in contempt of court for alleged conduct that took place before the entry of order that was allegedly violated?
2. Whether (assuming the injunction was invalid) the injunction became inoperative and was discharged when a protected person voluntarily initiated contact with the enjoined party?
3. Whether the Court abused its discretion in finding that attorney Fox communicated with or came about an adversary party by preparing a release at the request of its former clients, and faxing the release to said clients, which was used by the clients to consummate a settlement reached with an attorney-in-fact for an adversary party, independent of the lawyer’s efforts?
4. Whether the Court abused its discretion in finding that Rule 11 sanctions can be imposed when there is no specific conduct described and the procedural safe harbor provision was not complied with?
5. Whether the Trial Court erred in finding that the release was invalid?

Discussions

Defendants argue they could not be held in contempt for violating the Restraining Order, because the original order had dissolved, and the order extending it was not entered until January 2005, after the alleged contemptuous conduct took place. The record establishes that the Court entered a TRO on January 26, 2004, and then a hearing was held on February 4, 2004, and the

parties agreed to extend the restraining order for an additional two weeks. An Order reflecting this extension was not entered, however, until January 4, 2005. The alleged contemptuous conduct took place in November 2004, when Ms. Guinn signed the subject release.

We conclude there was no effective restraining order or injunction in place at the time of the contact between Ms. Guinn and the defendants. While the Court found that the restraining order was extended pending further orders of the Court at the hearing in February 2004, the record reflects the Order was not entered until January 2005. The Trial Court found that defendants were aware that the restraining order had been extended indefinitely at the February 2004 hearing, but a review of the transcript demonstrates that the Court extended the restraining order preventing demolition of the fire scene for the additional two weeks, and when asked about the other part of the restraining order, the Judge stated that he understood the defendants agreed to it, and said “we are just going to extend it anyway.” As the transcript demonstrates, the length of the extension was not clear, and there was no written order entered in a timely fashion that would have clarified the efficacy of the order. We conclude the Court erred in finding that defendants intentionally violated the restraining order, as the existence/length of any such order was not established.

Moreover, as defendants point out, “[a] court speaks only through its written judgments, duly entered upon its minutes. Therefore, no oral pronouncement is of any effect unless and until made a part of a written judgment duly entered.” *Environmental Abatement, Inc. v. Astrum R.E. Corp.*, 27 S.W.3d 530, 536 (Tenn. Ct. App. 2000); *see also Hines v. Thompson*, 148 S.W.2d 376 (Tenn. Ct. App. 1940). Additionally, this Court has previously ruled a trial court could not extend the temporary restraining order indefinitely. As we have stated:

Tenn. R. Civ. P. 65.03(5) provides that a temporary restraining order issued without notice expires within fifteen days after its issuance unless the trial court extends it during that period. If a trial court decides to extend a temporary restraining order, it may do so for only fifteen additional days. The trial court's September 21, 2004 temporary restraining order could have remained in effect until October 21, 2004. Thus, the trial court erred by directing that it "remain binding and in effect" past that date. It follows, therefore, that the trial court's order, to the extent that it continued its temporary restraining order past October 21, 2004, is contrary to Tenn. R. Civ. P. 65.03(5) and must be vacated.

State ex rel. Dean v. Nelson, 169 S.W.3d 648, 652 (Tenn. Ct. App. 2004).

For the foregoing reasons, we reverse the Court’s finding that defendants violated the restraining order, and we also reverse the contempt penalties assessed. Because there was no valid restraining order, defendants’ other issues relating to the contempt finding are rendered moot.

Next, defendants argue it was error for the Trial Court to void the release signed by Ms. Guinn. The Court relied upon Tenn. Code Ann. §34-1-121, and stated that the Court had to approve any settlement entered into on behalf of a disabled person. This code section, however,

gives a court the power to approve a settlement, but does not mandate that the court must approve all settlements.

This Court in *Eaton ex rel. Johnson v. Eaton*, 83 S.W.3d 131 (Tenn. Ct. App. 2001), was faced with a situation similar to this case. A Mr. Eaton had leased his farm to a Mr. Kelly, and offered to sell it to him several times for \$75,000.00, but Kelly did not accept the offer of sale. Eaton executed a power of attorney naming Elnora Eaton, his sister-in-law, as his attorney in fact. When Eaton became incompetent, Elnora offered to sell the farm to Kelly for \$75,000.00, and he accepted the offer and consummated the sale. Elnora then split the proceeds of the sale with Mr. Eaton's estranged wife, and Mr. Eaton did not get the money, and sued Elnora for breach of fiduciary duty and also to rescind the sale of the farm.

This Court held Elnora liable for the proceeds from the sale of the property, but refused to invalidate the sale of the farm to Kelly.

As *Eaton* teaches, the proper analysis in this case would have been whether reasonable person(s) in defendants' position would have been placed on notice that the settlement with Ms. Guinn was irregular, and knew or should have known that it was not in Ms. Goodman's best interests. The only proof before the Trial Court was that of Ms. Guinn and her explanation of why she entered into the settlement. There was no proof presented regarding defendants' knowledge about this transaction, nor whether the settlement agreement was actually fair to Ms. Goodman. Although the Court did not think the settlement was fair, there was no proof presented regarding the merits of the lawsuit or probability of success, or any other indicia that defendants should or would be held liable to Ms. Goodman. Also, while the Court made findings regarding misconduct of defendants and their attorney, there was no proof that any wrongful conduct took place. The only proof was the testimony of Ms. Guinn, who testified unequivocally that she approached the defendants and wanted to settle. Without further evidence, the Trial Court had no basis to conclude that the transaction should be voided. We conclude that the case should be remanded for further proof on this issue because the proof is insufficient to determine whether the release is invalid. We therefore, remand this case to the Trial Court to permit further evidence to be presented on this issue by the parties, which is appropriate under Tenn. Code Ann. §27-3-128.

For the foregoing reasons, we reverse in part and vacate in part the Trial Court's Judgment and remand for further proceedings consistent with this Opinion. The cost of the appeal is assessed one-half to plaintiffs and one-half to defendants.

HERSCHEL PICKENS FRANKS, P.J.